

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 6919 of 2022

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AGROMETAL VENDIBLES PRIVATE LIMITED
Versus
STATE OF GUJARAT

=====

Appearance:

MS. DIMPLE K. GOHIL(7451) for the Petitioner(s) No. 1

for the Respondent(s) No. 2,3

MR UTKARSH SHARMA, AGP - ADVANCE COPY SERVED TO
GOVERNMENT PLEADER/PP for the Respondent(s) No. 1

=====

CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 07/04/2022

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1 With the consent of the learned counsel appearing for the parties, the matter is taken up for final hearing.

2 Rule returnable forthwith. Mr. Utkarsh Sharma, the learned A.G.P. waives service of notice of Rule for and on behalf of the respondents.

3 By this writ application under Article 226 of the Constitution of India, the writ applicant has prayed for the following reliefs:

“(a) Your Lordships be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the petitioner’s case and after going into the validity and legality thereof be pleased to quash and set aside the impugned show cause notice dated 14.03.2022;

(b) Your Lordships be pleased to issue a writ of mandamus or any other appropriate writ in the nature of mandamus ordering and directing the respondents to forthwith refrain from taking any further steps or proceeding pursuant to or in implementation of the impugned notice dated 14.03.2022 issued by respondent No.3;

(c) That pending the hearing and final disposal of the above petition, this Hon'ble Court be pleased to, stay the effect and operation of impugned notice dated 14.03.2022;

(d) An ex-parte ad-interim relief in terms of prayer (c) above may kindly be granted;

(e) Costs of the petition be provided for; and

(f) Such other and further order or orders as may be deemed just and proper in the facts and circumstances of the present case may kindly be granted.”

4 The facts giving rise to this writ application may be summarized as under:

5 The writ applicant has received an intimation of the tax ascertained as being payable under Section 74(1) and (5) resply of the GST Act, 2017 in the Form GST DRC – 01 dated 14th March 2022. In the intimation, it has been stated as under:

“O/o the Asst. Commissioner of State Tax, Unit – 3

C-4, Multi Storeyed Building, Apna Bazar, Lal Darwaja

Ahmedabad – 380001

=====
ACST/Unit-3/GST Adjudication/2021-22/O.W.No. Dt. 14.03.2022

FORM GST DRC-01

Intimation of tax ascertained as being payable under section 74(1), (5)

[See Rule 142 (1A)]

Part A

To,

*AGROMETAL VENDIBLES PRIVATE LIMITED (GSTIN:-
24AA0CA1410F1Z8)*

*439, Near Khetarpal Ni Pole, Ahmedabad, Manek Chawk, AHMEDABAD
380001*

Email ID:- abans.textile@abans.co.in

DEALER PROFILE:-

<i>Trader Name</i>	<i>AGROMETAL VENDIBLES PRIVATE LIMITED</i>
<i>Legal Name</i>	<i>AGROMETAL VENDIBLES PRIVATE LIMITED</i>
<i>GSTIN</i>	<i>24AA0CA1410F1Z8</i>
<i>Commodity/Service</i>	<i>GOLD AND SILVER</i>
<i>HSN</i>	<i>71081300 / 71069100 / 09093129</i>
<i>Remarks</i>	<i>-</i>

1. BRIEF FACTS OF THE CASE:-

For the year 2019-20, under Section 61 of Gujarat Goods and Services Act, 2017 and under the Rule 99 of Gujarat Goods and Services rules, 2017, Scrutiny of your returns was done and following inconsistencies were noticed.

For the year 2019-20, regarding utilization of Input Tax Credit by 99.98% and non-reversal of Input Tax Credit under Rule 42 for exempted and Non-GST supply of Rs 1,40,78,85,626/- ASMT-10 was issued to you on 31.01.2022 (REF NO. ZD240122027590) for which reply was submitted on 01.02.2022

2. DETAIL REPLY OF THE TAX PAYER:

You have stated the following regarding the notice.

(1) As per your reply you have stated that you have not utilized Input Tax credit to the extent of 100% and also have discharged the tax through cash ledger and it was informed that as per Rules ITC REVERSAL was done and Tax credit is reduced. But there is also some variation in the GSTR-9 and GSTR 9-C in the REVERSAL ITC amount. Further, you claimed Rs 14,06,55,810/- as input tax credit only from

two vendor. The facts of both the vendor are given below. While scrutiny of returns submitted by you we found following discrepancy and have undertaken actions/proceedings under section 74(1)(5). While looking at the system generated 2-A/B and table 8 of GSTR 9 presented by you, you are not entitled to avail input tax credit of Rs. 14,06,55,810/-.

The replies submitted by you and while looking at the system generated auto populated 2-A and 8-A by showing purchase of Rs. 441,25,75,002/- from ASTERPETAL TRADE & SERVICES PRIVATE LIMITED GSTN 24AANCA7754P1ZX you have received input tax credit of Rs. 6,42,60,812/- SGST and Rs. 6,42,60,812/- CGST. And from MANMISH TRADERS PRIVATE LIMITED GST NO. 24AAGCM6660D2ZL showed purchase of Rs. 41,66,06,984/- and claimed tax credit of Rs. 60,67,092/- SGST and Rs. 60,67,092/- CGST. And as mentioned above in aggregate you showed a purchase of Rs. 4,82,91,81,986 from both the supplier and have claimed Input Tax Credit of Rs 7,03,27,905/- SGST and Rs 7,03,27,905/- CGST aggregating to Rs. 14,06,55,810/-. Above referred both the vendor's business details and GST registration number detail is as follows:-

(i) ASTERPATEL TRADE & SERVICES PRIVATE LIMITED GSTN 24AANCA7754P1ZX (Cancelled suo-moto) Date of Cancellation 31.03.2019 (The effective date of cancellation of your registration is 25.01.2018. In case, Registration has been obtained by means of fraud, willful misstatement or suppression of facts.)

(ii) MANMISH TRADERS PRIVATE LIMITED GST NO 2411GCM6660D2ZL (Cancelled suo-moto) Date of Cancellation 29.11.2017 (The effective date of cancellation of your

registration is 25.01.2018. In case, Registration has been obtained by means of fraud, willful misstatement or suppression of facts.) This has reference to your reply dated 17.12.2021 in response to the notice to show cause dated 07.12.2021

Thus, the Registration number for the above both vendor is cancelled from the Registration date. Both the vendors have obtained the registration number by means of fraud, willful misstatement or suppression of facts. Thus, the vendors have received the registration number with intention to commit fraud and this registration number was cancelled from the date of it registration. And you have claimed input tax credit amounting to Rs. 7,03,27,905/- for SGST and Rs. 7,03,27,905/- for CGST totaling to Rs. 14,06,55,810/- by showing purchase from both these vendor amounting to Rs. 482,91,81,986/-.

Legal provisions regarding tax credit are as below.

Section 16 (2) (c)(c) subject to the provisions of section 41 or section 43A, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply.

Rule 36(3) No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts. Hence, in the case of the said both Vendors, it has been noticed that as per the show cause notice and cancellation order issued by the proper officer it is found that both the vendors are not doing any business activity at the place of business but received registration number with the intention to commit fraud.

Section 155 of Central Goods and Services Act 2017 – Burden of proof

Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

Rule 121 of CGST Rule 2017: Recovery of Credit wrongly Availed. The amount credited under sub-Rule (3) of rule 117 may be verified and proceedings under section 73 or, as the case may be, section 74 shall be initiated in respect of any credit wrongly availed, whether wholly or partly.

3. CONCLUSION/DECISION: - Thus, as shown below, even though you were not eligible to claim input tax credit, you have obtained and have not paid input tax credit.

	<i>Total payable tax</i>		<i>140655810</i>	
		<i>Interest</i>	<i>67514788</i>	
		<i>Penalty</i>	<i>140655810</i>	
		<i>Total</i>	<i>348826408</i>	
	<i>DETAILS OF PAYABLE TAX</i>			
	<i>PAYABLE TAX</i>	<i>INTEREST PENALTY</i>	<i>PENALTY</i>	<i>TOTAL</i>
<i>CGST</i>	<i>70327905</i>	<i>33757394</i>	<i>70327905</i>	<i>174413203</i>
<i>SGST</i>	<i>70327905</i>	<i>33757394</i>	<i>70327905</i>	<i>174413203</i>
<i>TOTAL</i>	<i>140655810</i>	<i>67514788</i>	<i>140655810</i>	<i>348826406</i>

Thus, you are not eligible to claim Input Tax Credit of Rs. 7,03,27,905/- for SGST and Rs 7,03,27,905/- for CGST. And interest on the said amount of Rs 6,75,14,788/- remains recoverable from you under the

provision of section 50 of Gujarat Goods and Services Tax Act, 2017. Accordingly, it is informed to you to repay the above amount under section 74(8) of GST ACT within 15 days via DRC-03. In case if you wish to provide any explanation or clarification same can be done by 11.04.2022 along with supporting documents / evidence.

If you fail to produce DRC-03 by paying said Tax, interest and penalty within the above time or clarification with supporting evidence not done then it shall be deemed that you want to state nothing and then you shall be made responsible for the payment of Rs. 348826406/- for tax, interest and penalty which shall be recoverable according to the law. The same to be noted accordingly.

*Date: 14.03.2022
Place: Ahmadabad*

*(B. L. Damor)
Assistant State Tax Commissioner
Phase – 3, Ahmadabad”*

6 In such circumstances referred to above, the writ applicant is here before this Court with the present writ application seeking to challenge the above referred notice.

7 We have heard Ms. Dimple Gohil, the learned counsel appearing for the writ applicant and Mr. Utkarsh Sharma, the learned A.G.P. appearing for the respondents.

8 The principal argument of Ms. Gohil is that although the impugned notice is in the form of an intimation, yet it is as good as a final order passed by the Assistant State Tax Commissioner, Ghatak – 3, Ahmedabad. Ms. Gohil would submit that her client has been asked to make the payment within a period of fifteen days in accordance with the

provisions of Section 74(8) of the Act, 2017 by uploading the DRC – 03. Ms. Gohil further submitted that the writ applicant has also been informed or made to understand that if he fails to make the payment in DRC – 03, then the amount of Rs.34,88,26,406/-, as determined towards tax, shall be recovered with interest and penalty. According to Ms. Gohil, if in response to the intimation given by the department to the dealer, the dealer fails to make good the payment, then the next step in the process would be to issue a show cause notice, and thereby, give an opportunity of hearing to the dealer. Thereafter, the final assessment order would be passed fixing the liability of the dealer.

9 In such circumstances referred to above, Ms. Gohil prays that there being merit in her writ application, the same be allowed and the impugned intimation in Form GST DRC – 01 be quashed and set aside.

10 *Per contra*, Mr. Sharma, the learned A.G.P. submitted that he would like to raise a preliminary objection as regards the very maintainability of the present writ application, as according to him, an intimation of tax in accordance with sub-section (5) of Section 74 of the Act in the Form GST DRC – 01 cannot be challenged by way of a writ application. Mr. Sharma would submit that if the writ applicant wants to ignore the intimation in Form GST DRC – 01, then he may do so, but, thereafter, a show cause notice under sub-section (1) of Section 74 of the Act would be issued. Once a show cause notice is issued, then the regular assessment proceedings would be undertaken and the final liability would be determined and fixed accordingly.

11 In such circumstances referred to above, Mr. Sharma prays that there being no merit in the present writ application, the same may be rejected.

● **ANALYSIS:**

12 Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether we should quash and set aside the notice of intimation of tax issued by the Assistant State Tax Commissioner, Ghatak – 3, Ahmedabad, in Form GST DRC – 01.

13 Before adverting to the rival submissions canvassed on either side, we must look into Section 74 of the Act, 2017. Section 74 reads thus:

“74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful- misstatement or suppression of facts.

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful- mis statement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section

(1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays

the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five percent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty equivalent to ten percent of tax or ten thousand, whichever is higher, due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1 : For the purposes of section 73 and this section. -

(i) the expression “all proceedings in respect of the said notice” shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons

liable to pay penalty under [sections 122 and 125] are deemed to be concluded.

Explanation 2 : *For the purposes of this Act, the expression “suppression” shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.”*

14 What is relevant for our purpose is sub-section (5) of Section 74 referred to above. Sub-section (5) makes it very abundantly clear that before service of a show cause notice under sub-section (1) referred to above, such person may pay the amount of tax along with interest payable under Section 50 and a penalty equivalent to 50% of such tax on the basis of his own ascertainment of such tax or the tax as may be ascertained by the proper officer and inform the proper officer in writing about such payment.

15 Thus, from the above, the scheme of the Act is that a person may be given one opportunity to make the payment towards tax. If he makes the payment under sub-section (5), then he gets the benefit of sub-section (6). Sub-section (6) provides that the proper officer, on receipt of the information from the dealer about payment of the tax, would, thereafter, not proceed to serve any notice under sub-section (1) in respect of the tax so paid or any penalty payable under the provisions of the Act or the Rules made thereunder.

16 In the context of sub-section (5) and sub-section (6) of Section 74 of the Act, we shall now look into the Form GST DRC – 01A and Form

GST DRC – 03 resply.

17 The Form **GST DRC – 01A** is in two parts : **Part A** and **Part B**. The same reads thus:

“FORM GST DRC-01A

Intimation of tax ascertained as being payable under section 73(5)/74(5)

[See Rule 142 (1A)]

Part A

No.:

Date:.....

Case ID No.

To
GSTIN.....
Name.....
Address.....

Sub.: Case Proceeding Reference No.....- Intimation of liability under section 73(5)/section 74(5) – reg.

Please refer to the above proceedings. In this regard, the amount of tax/ interest/penalty payable by you under section 73(5)/74(5) with reference to the said case as ascertained by the undersigned in terms of the available information, as is given below:

<i>Act</i>	<i>Period</i>	<i>Tax</i>			
<i>CGST Act</i>					
<i>SGST/UTGST Act</i>					
<i>IGST Act</i>					
<i>Cess</i>					
<i>Total</i>					

The grounds and quantification are attached / given below:

You are hereby advised to pay the amount of tax as ascertained

above alongwith the amount of applicable interest in full by , failing which Show Cause Notice will be issued under section 73(1).

You are hereby advised to pay the amount of tax as ascertained above alongwith the amount of applicable interest and penalty under section 74(5) by , failing which Show Cause Notice will be issued under section 74(1).

In case you wish to file any submissions against the above ascertainment, the same may be furnished by..... in Part B of this Form.

Proper Officer

Signature.....

Name.....

Designation.....

Upload attachment

“Part B

Reply to the communication for payment before issue of Show Cause Notice

[See Rule 142 (2A)]

No.:

Date:

To
Proper Officer,
Wing / Jurisdiction.

**Sub.: Case Proceeding Reference No.....-
Payment/Submissions in response to liability intimated under Section
73(5)/74(5) – reg.**

Please refer to Intimation ID..... in respect of Case ID.....vide which the liability of tax payable as ascertained under section 73(5) / 74(5) was intimated.

In this regard,

A. this is to inform that the said liability is discharged partially to the extent of Rs. throughand the submissions regarding remaining liability are attached / given

below:

OR

B. the said liability is not acceptable and the submissions in this regard are attached / given below:

--

Authorised Signatory

Name.....

GSTIN.....

Address.....

Upload attachment

18 The Form GST DRC – 03 reads as under:

“FORM GST DRC - 03

[See Rule 142(2) & 142(3)]

Intimation of payment made voluntarily or made against the Show Cause

Notice (SCN) or statement

1.	GSTIN		
2.	Name	<Auto.	
3.	Cause of payment	<< drop down >> Audit, investigation, voluntarily, SCN, annual return, reconciliation statement, others (specify)	
4.	Section under which voluntary payment is made	<< drop down >>	
5.	Details of show cause notice, if payment is made within 30 days of its issue	Reference No.	Date of issue
6.	Financial Year		
7.	Details of payment made including interest and penalty, if applicable. (Amount in Rs.)		

Sr. No.	Tax Period	Act	Place of supply (POS)	Tax / Cess	Interest	Penalty, if applicable	Others	Total	Ledger utilized (Cash / Credit)	Debit entry no.	Date of debit entry
1	2	3	4	5	6	7	8	9	10	11	12

8. Reasons, if any- << Tex box >>

9. Verification -

I hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Signature of Authorized Signatory

Name

Designation / Status

Date:.....”

19 The Form GST DRC – 01A should be read with Rule 142 (1A) of the Rules, 2017. **Rule 142 (1A)** of the Rules, 2017 reads thus:

“(1A) The proper officer may, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, shall communicate the details of any tax, interest and penalty as ascertained by the said officer, in Part A of FORM GST DRC - 01A.”

20 The Form GST DRC – 03 referred to above should be read with Rules 142(2) and 142(3) respaly of the Rules, 2017. **Rule 142(2)** reads thus:

“Notice and order for demand of amounts payable under the Act. 142(2). Where, before the service of notice or statement, the person

chargeable with tax makes payment of the tax and interest in accordance with the provisions of sub-section (5) of Section 73 or, as the case may be, tax, interest and penalty in accordance with the provisions of sub-section (5) of section 74, or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act, whether on his own ascertainment or, as communicated by the proper officer under sub-rule (1A), he shall inform the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in FORM GST DRC-01.”

21 **Rule 142(3)** reads thus:

“Notice and order for demand of amounts payable under the Act.

142(3). Where the person chargeable with tax makes payment of tax and interest under sub-section (8) of section 73 or, as the case may be, tax, interest and penalty under sub-section (8) of section 74 within thirty days of the service of a notice under sub-rule (1), or where the person concerned makes payment of the amount referred to in sub-section (1) of section 129 within fourteen days of detention or seizure of the goods and conveyance, he shall intimate the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an order in FORM GST DRC-05 concluding the proceedings in respect of the said notice.”

22 We shall now look into the show cause notice which is being issued under sub-section (1) of Section 74 in Form GST DRC – 01. The same reads thus:

“FORM GST DRC – 01

[See rules 100(2) & 142(1)(a)]

Reference No.:.....

Date:.....

To

.....GSTIN / Temp. ID

..... Name

..... Address

Tax Period :

F.Y.

Act-Section/sub-section under which SCN is being issued-

SCN Reference No.....

Summary of Show Cause Notice

(a) Brief facts of the case:

(b) Grounds:

(c) Tax and other dues:

(Amount in Rs.)

Sr. No.	Tax rate	Turnover	Tax period		Act	POS (Place of Supply)	Tax	Interest	Penalty	Free	Others	Total
			From	To								
1	2	3	4	5	6	7	8	9	10	11	12	13
Total												

THE HIGH COURT
OF GUJARAT

.....

Signature

Name.....

Designation.....

Jurisdiction.....

Address.....

Notes-

1. Only applicable fields may be filled up.

2. Column Nos.2, 3, 4 and 5 of the above Table i.e. tax rate, turnover and tax period are not mandatory.

3. Place of Supply (POS) details shall be required only if the demand is created under the IGST Act.”

23 As noted above, by virtue of sub-section (5) of Section 74, one

opportunity is given to the dealer to pay the amount towards tax as ascertained by the proper officer or on the basis of his own ascertainment. If the dealer proceeds to avail the benefit of sub-section (5), then he gets the benefit of sub-section (6) of Section 74 of the Act. In other words, no show cause notice would be issued thereafter under sub-section (1) of Section 74 and the proceedings if any would be dropped.

24 Mr. Sharma, the learned A.G.P. may be justified in raising a preliminary objection as regards the very maintainability of the present writ application on the ground that the writ applicant could not have questioned the legality and validity of the intimation issued by the proper officer in Form GST DRC – 01. The blunder committed by the department is at this stage. On one hand, the notice is termed as an intimation of tax ascertained as being payable under sub-section (5) of Section 74. Whereas, the intimation is issued in Form GST DRC – 01. The Form GST DRC – 01 is in the form of a show cause notice, which is issued under sub-section (1) of Section 74 of the Act i.e. in accordance with Rule 142(1)(a) of the Rules, 2017. At the stage of an intimation under sub-section (5) of Section 74 in the Form GST DRC – 01A, it is Rule 142(1A) which is applicable. Therefore, while issuing an intimation, the proper officer in the notice could not have said that failure on the part of the noticee may entail the consequence of recovery of the entire amount with penalty and interest.

25 The intimation under sub-section (5) has to be strictly in Form GST DRC – 01A. It is not a show cause notice. In the intimation, the dealer should be informed that if he fails to make the payment, the next step in the process will be issue of a show cause notice under sub-section (1) of Section 74 in accordance with the Form GST DRC – 01.

26 The writ applicant had to come before this Court because the contents of the intimation are incorrect. The writ applicant has expressed apprehension that if he would not comply with the intimation, then the department may proceed to recover the entire amount.

27 At the cost of repetition, once there is a show cause notice in the Form GST DRC – 01 in accordance with Rule 142(1)(a) of the Rules to be read with sub-section (1) of Section 74, the same would ultimately lead to regular assessment proceedings with final assessment order.

28 Therefore, the department needs to correct itself not only as regards their understanding of the entire procedure, but even the contents of the Forms are incorrect. The intention of the proper officer was to give an intimation in accordance with sub-section (5) of Section 74 and therefore, the intimation should have been in the Form GST DRC – 01A and not Form GST DRC – 01. There is a vast difference between Rule 142(1)(a) and Rule 142 (1A) of the Rules. Therefore, from now onwards, if the department deems fit to issue any intimation of tax ascertained as being payable under sub-section (5) of Section 74 in accordance with the Rule 142(1A) of the Rules, it shall issue notice in the Form GST DRC – 01A. In such a notice of intimation, the proper officer shall not threaten the dealer that if he would fail to comply with the intimation, the department shall proceed to recover the tax. The proper officer should inform the dealer that if he would pay the tax, well and good, otherwise the department shall proceed to issue a show cause notice under sub-section (1) of Section 74 in accordance with Rule 142(1)(a) of the Rules, 2017 in Form GST DRC – 01 and carry out regular assessment proceedings.

29 For the foregoing reasons, the impugned intimation of tax in the Form GST DRC – 01 is hereby quashed and set aside. We dispose of this writ application with a clarification that if the proper officer wants to undertake a fresh exercise, he may do so in accordance with law.

(J. B. PARDIWALA, J)

CHANDRESH

(NISHA M. THAKORE, J)

